IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17342 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRABHAI BHAVANJI THAKKAR

Versus

CHAIRMAN, BHUJ AREA DEVELOPMENT AUTHORITY

Appearance:

1. Special Civil Application No. 17342 of 2003

MR NALIN K THAKKER for Petitioner No. 1

MR NIKHILESH J SHAH for Respondent No. 1

MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P. for Respondents Nos. 2-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 22/07/2004

ORAL JUDGEMENT

1. RULE. Service of rule is waived by learned advocate Shri N.J. Shah for respondent no.1 and by learned A.G.P. Ms Maithili Mehta for respondents nos. 2 and 3. At the request of the learned advocates and looking to the facts of the case, the petition is finally heard today.

2. The petitioner was an owner of land bearing Survey Nos. 3562, 3632 and 3644 (original plots nos. 970, 1043 & 1055, respectively) admeasuring 1373.04 sq meters of land at Bhuj. As a result of implementation of Bhuj Town Planning Scheme No. 4, the petitioner is to be allotted Final Plot No. 1021, in lieu of the aforestated survey nos, which admeasures 937.57 sq meters. The petitioner has been aggrieved because the petitioner is losing a portion of his original plot and according to him, he will have no access to the main road. It has been therefore prayed by the petitioner that there should be variation in the scheme so as to give another portion of his own original land to him. Alternatively, the plot, which has been reserved for sale, bearing Final Plot No. 1397, be allotted to him at the prevailing market price.

3. Learned advocate Shri N.K. Thakkar appearing for the petitioner has submitted that as per the scheme, a road has been laid on the northern side of the petitioner's Final Plot No. 1021. It is his case that the said road is not required. It has been submitted by him that either there should be variation to the effect that the road should be removed or the northern portion of his original plot, where other Final Plots have been reconstituted, should be given to the petitioner.

4. It is the case of the petitioner that the original plot of the petitioner should have been given to him in its entirety or northern side of his original plot should have been allotted to the petitioner.

5. Thereafter, it has been submitted by the learned advocate that the town planning scheme made in the city of Bhuj was meant for rehabilitation of earthquake affected residents of Bhuj. In the process of making the scheme, the respondent authorities ought not to have disturbed or changed the plots of the residents of Bhuj. It is his case that the scheme has not been made for better town planning but it is only for rehabilitation of the residents of Bhuj. It has been submitted that as a result of the scheme, several persons have been adversely affected and, therefore, also the scheme requires variation.

6. It has been submitted by learned advocate Shri Thakkar that Final Plot No. 1021 has been constituted in such a manner that a portion of his original plot has been allotted to the petitioner, and a portion of land belonging to somebody else has also been allotted to the petitioner. It is the case of the petitioner that this act denotes arbitrariness on the part of the respondent authorities.

7. No other arguments have been advanced by learned advocate Shri N.K. Thakkar.

8. In pursuance of notice issued by this Court, learned advocate Shri N.J. Shah has appeared for respondent no. 1 and learned Advocate General Shri S.N. Shelat, with learned A.G.P. Ms Maithili Mehta, has appeared for respondents nos. 2 and 3. Affidavits have been filed on behalf of the respondent authorities, which are on record.

9. On behalf of the respondents, in reply to the submissions made by learned advocate Shri N.K. Thakkar, it has been submitted that it is not possible to make any variation so as to remove the road, which is on the northern side of Final Plot No. 1021. My attention has been drawn to annexure-II (page 30) of the affidavit-in reply filed by Shri Kaushikumar Thanki on behalf of respondent no.1. Upon perusal of the said map, it is clear that there are several Final Plots on the northern side of Final Plot No. 1021. If the proposed road is not laid on the northern side of Final Plot No. 1021, it would not be possible for the owners of those Final Plots to have an access to the main road. It has been submitted that as a part of the town planning, the said road is very much required.

10. It has been further submitted that the petitioner had never made any request in the past before any authority that he should have been given northern portion of his original plot.

11. It has been thereafter submitted that it is factually incorrect to say that the petitioner will not be having any access to any road from his Final Plot No. 1021. It has been shown that on the northern side of Plot No. 1021, there is a 4.5 meter wide road, which is having a dead-end on the eastern side. Moreover, on the southern side of the said final plot, there is a small street having width of approximately 2 meters. It has been thus submitted that the submission to the effect

that the petitioner is not having access to any road is not correct.

12. It has been lastly submitted by the learned advocates for the respondents that the scheme in question is not only for rehabilitation of earthquake affected residents of Bhuj, but it is also for better and systematic town planning.

13. My attention has been drawn to the notification dated 9th May, 2001 issued by the State of Gujarat incorporating the object with which respondent no. 1 authority was constituted. The said notification reveals that respondent no. 1 was expected to carry out modern planning, repair and reconstruction for new infrastructure in the town. Thus, rehabilitation of earthquake affected persons is not the only purpose with which the scheme has been made.

14. I have heard the learned advocates at length and have also perused the relevant record, including the maps annexed to the petition, and the affidavits of the Officers.

15. Upon hearing the learned advocates and upon perusal of the record, it appears that this petition does not require any interference by this Court.

16. It is up to the town planning authority to decide as to how a scheme should be made. Unless the Court comes to a conclusion that the scheme had been made in an arbitrary manner or with a mala fide intention, this Court would not ordinarily interfere with the scheme which is made under the Act. It is apparent that if the road proposed in the scheme is not laid, several plot holders would be deprived of access to the main road. It is the subject of an expert to decide as to how a road should be laid and how a plot should be reconstituted.

17. It is pertinent to note here that in Bhuj, in the past, constructions had been put up by its residents in a haphazard manner and original plots were not having proper shape suitable for construction of buildings. When a town planning scheme is to be made, it is for the respondent authorities to see that the plots are of regular shape and size so that buildings can be constructed thereon. They have to make an effort to see that provisions of Section 45 of the Act are complied with in the process of reconstitution of plots. The function of reconstitution of plots etc., being the function of an expert, this Court would be slow to

examine correctness thereof unless prima facie it appears that the same is malicious in any manner. This does not appear to be the case here. In the instant case, there is nothing to show that the scheme has been made in an arbitary manner. In the circumstances, it would not be proper to say that the scheme has not been made properly and it requires variation.

18. It is not correct to say that the holder of Final Plot No. 1021 is not having any access to the main road as submitted by learned advocate Shri N.K. Thakkar appearing for the petitioner. It can be seen from the map, which has been annexed to the affidavit-in reply filed by Shri Thanki on behalf of respondent no. 1, that there is a 4.5 meters wide road on the northern side of Final Plot No. 1021 and there is a small lane on the southern side of the plot. There appears to be some dispute with regard to the width of the lane, which is on the southern side, because according to the respondents, the width of the lane is about 2 meters, whereas learned advocate Shri N.K. Thakkar appearing for the petitioner has submitted that it is hardly 1.5 meters wide. Be that as it may, there is an additional lane through which the petitioner can have access to the main road somewhere.

19. It is the say of the petitioner that the northern portion of his plot has been occupied by his tenant and possibly the petitioner's tenant might not permit the petitioner to have access to the main road. In the circumstances, it has been submitted that some alternative arrangement should be made. If the grievance ventilated by the petitioner is genuine, he will have to deal with his tenant in his own way because the tenant cannot restrain the landlord from having access to the main road. This is not a question which will have to be bothered by the Town Planning Officer or the respondent authorities. Thus, the submission that the said plot is not connected to any road is not correct and cannot be accepted.

20. Upon perusal of the record, it appears that the petitioner has lost 31.71% of land in pursuance of the scheme. Upon perusal of the reply filed on behalf of respondent no. 1, it appears that looking to the area of the land the petitioner was possessing, approximately 35% of land, i.e. approximately 458 sq meters of land could have been deducted. In fact, less land, i.e., 435 sq.mts. has been deducted by the respondent authorities from his original plot and, therefore, there does not appear to be any mala fide intention on the part of the

respondent authorities as less land has been deducted in case of the petitioner.

21. It has been submitted by learned advocate Shri N.J. Shah appearing for respondent no.1 that needful has been done for inviting offers by giving public notice so that Final Plot No. 1397 can be sold by respondent no.1. Learned advocate Shri Thakkar has submitted that the petitioner was not aware of the said fact and possibly for that reason, he has not submitted his offer. If the petitioner is interested in purchase of the said plot, as a special case, he should be permitted to submit his application before 30th July, 2004 to respondent no. 1. The petitioner shall submit an application in the prescribed form with prescribed amount in accordance with the policy of respondent no.1 so that the petitioner's request can be considered in accordance with the policy of respondent no.1. It has been submitted by learned advocate Shri N.J. Shah, in pursuance of instructions received by him, that final decision with regard to sale of the said plot is likely to be taken in near future. It is therefore directed that the petitioner should submit his tender/application form in the prescribed manner on or before 30th July, 2004 and respondent no.1 shall not take any decision with regard to disposal of Final Plot No. 1397 till 6th August, 2004 and without considering offer of the petitioner, if the petitioner's application is in the prescribed manner.

22. I do not find any substance in the petition as there does not appear to be any arbitrariness or mala fide intention on the part of the respondent authorities. The petition is therefore dismissed. Rule is discharged with no order as to costs.

22. Looking to the fact that ad-interim relief is operating in favour of the petitioner since 19th December, 2003, it has been submitted by learned advocate Shri Thakkar for the petitioner that ad-interim relief be continued for some time. The respondents have objected to continuation of the same. However, looking to the facts of the case, ad-interim relief granted earlier is ordered to be continued for a further period of four weeks from today.

(A.R. DAVE, J.)
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